

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

**\*\* 8:30 a.m. TIME CERTAIN \*\***

Meeting Date: 8/16/06 - KL

Bulk Item: Yes ☐ No ☒

Division: County Attorney

Department: County Attorney

Staff Contact Person: Jerry D. Sanders

**AGENDA ITEM WORDING:**

An Attorney-Client Closed Session in the matter of Monroe County v. Florida Department of Community Affairs, DCA Final Order No. DCA06-OR-157.

**ITEM BACKGROUND:**

1. On June 29, 2006, pursuant to Section 380.05(6) of the Florida Statutes, the Florida Department of Community Affairs (DCA) issued Final Order Number DCA06-OR-157 rejecting Monroe County Ordinance No. 015-2006 after finding it to be inconsistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern.
2. The DCA's Final order was submitted for publication in the Florida Administrative Weekly on June 29, 2006 for publication on July 14, 2006.
3. Pursuant to Section 120.569, any person whose substantial interests are affected by the Final Order has the opportunity to request an administrative proceeding regarding the DCA's action. Such a request must be filed with the Agency Clerk of the Florida Department of Community Affairs within 21 calendar days of publication of the Final Notice.
4. A *Petition for Formal Administrative Proceedings* was filed with the State of Florida Division of Administrative Hearings on July 21, 2006.

**PREVIOUS RELEVANT BOCC ACTION:**

1. On April 19, 2006, Monroe County *Ordinance No. 015-2006* was passed unanimously by the BOCC at its regular meeting.
2. On February 15, 2006, Workforce Housing Task Force recommendations were conceptually approved and direction given to staff by the BOCC pursuant to *Resolution No. 093-2006* and *Resolution 096-2006*.
3. On July 19, 2006, at its regular meeting, the Board authorized staff to appeal DCA's rejection of Monroe County *Ordinance 015-2006* by filing a *Petition for Formal Administrative Proceedings* with the State of Florida Division of Administrative Hearings.
4. On July 24, 2006, the BOCC approved the advertising and holding the Attorney-Client Closed Session in this matter.

**CONTRACT/AGREEMENT CHANGES: N/A**

**STAFF RECOMMENDATIONS: Approval.**

**TOTAL COST:** \_\_\_\_\_

**BUDGETED:** Yes ☐ No ☐

**COST TO COUNTY:** \_\_\_\_\_

**SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes ☐ No ☒

**AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty ☒ OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

**DIVISION DIRECTOR APPROVAL:** \_\_\_\_\_

 7/26/06  
SUZANNE A. HUTTON, COUNTY ATTORNEY

**DOCUMENTATION:** Included ☐ \_\_\_\_\_

Not Required ☐ \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY**  
**NOTICE OF ATTORNEY-CLIENT CLOSED SESSION**

The Board of County Commissioners of Monroe County, Florida, pursuant to Section 286.011(8), Florida Statutes will hold a Closed Attorney-Client Session during a public meeting to be held on **Wednesday, August 16, 2006, at 8:30 A.M.,** at the Key Largo Library, Tradewinds Shopping Center, 101485 Overseas Highway, Mile Marker 101, Key Largo, Florida.

Those persons attending the Closed Session will be the County Commissioners, County Administrator Thomas J. Willi, County Attorney Suzanne A. Hutton, Assistant County Attorney Bob Shillinger, Assistant County Attorney Jerry Sanders, Jerry Coleman, Esq., the County's counsel in this litigation, and a certified court reporter. The purpose of the Closed Session concerns pending litigation in the case of *Monroe County v. Florida Department of Community Affairs, DCA Final Order No. DCA06-OR-157*, in which the County is presently a party. At the end of this Closed Session, the public portion of the meeting will be opened.

Dated at Key West, Florida, this 21st day of July, 2006.

Office of the County Attorney

Publication dates

Reporter	7/28/06
Keynoter	7/29/06
Key West Citizen	7/30/06

cc: Court Reporter

STATE OF FLORIDA  
DIVISION OF ADMINSTRATIVE HEARINGS

MONROE COUNTY,  
Petitioner,

v.

CASE NO.  
DCA Final Order No. DCA06-OR-157

FLORIDA DEPARTMENT OF  
COMMUNITY AFFAIRS,  
Respondent.

\_\_\_\_\_ /

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS**

**Introduction**

Monroe County, a political subdivision of the State of Florida, files this Petition for Formal Administrative Proceedings pursuant to Sections 120.569 and 120.57(1), Florida Statutes, to challenge the Final Order of the Department of Community Affairs rejecting the Land Development Regulation adopted by Monroe County and states as follows:

1. The challenged final order is: DCA06-OR-157, published in the Florida Administrative Weekly, Volume 32, No. 28, July 14, 2006.
2. The challenged final order rejects a land development regulation that seeks to implement portions of the Monroe County Comprehensive Plan and regulate land use and development within Monroe County.
3. This challenge is based on the consistency of the subject Land Development Regulation (LDR) with Chapter 380, Florida Statutes, the Area of Critical State Concern Act, and Florida Statutes, Section 125.01055 regarding Affordable Housing. The regulation encourages and allows the creation of more affordable housing by allowing a “dwelling

density bonus unit” and counting affordable dwelling units as half-units for the purpose of density computation if less than 750 square feet.

4. Petitioner seeks an administrative determination overturning the Final Order of the DCA on the basis that it is consistent with the requirements of Chapter 380, Florida Statutes, and Florida Statutes Section 125.01055 for the reasons stated below.

#### **Identification of Petitioner and Other Parties**

5. Petitioner, Monroe County, is a non-chartered county and a political subdivision of the State of Florida, whose address is 500 Whitehead Street, Key West, Florida 33040.
6. Respondent, Department of Community Affairs (“DCA”) is a State agency exercising powers granted to it by Section 380.05, Florida Statutes, to approve or reject land development regulations that are enacted, amended, or rescinded by any local government in the Florida Keys Area of Critical State Concern (“ACSC”). DCA’s address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

#### **Explanation of How Petitioner’s Substantial Interests Are or Will be Affected**

7. The Monroe County Board of County Commissioners has found that there is a current lack of sufficient affordable housing and a current estimated unmet need of over 7,300 affordable units within the County.
8. The Monroe County Board of County Commissioners has further found that the lack of sufficient affordable housing opportunities for the local work force creates serious risk to the local economy.

9. The Monroe County Board of County Commissioners has found that a limited land area suitable for residential development remains in the County and allowing a density bonus when building affordable housing will allow for the creation of more such housing and that such is a legitimate governmental interest and proper to implement goals 101 and 601 of the Monroe County Comprehensive Plan (Policy 101.4; Policy 101.4.5.; Policy 601.1.12; and Objectives 601.2 and 601.6). The Land Development Regulations in question specifically further Florida Statute Section 163.3202(3) by implementing an innovative land development regulation provisions such as transfer of development rights, incentive, and inclusionary housing.
10. The Monroe County Board of County Commissioners has further found that the Amendments to the LDRs in question specifically further Florida Statute Section 125.01055 providing “that a County may adopt and maintain in effect any law, ordinance, rule or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.”
11. If Monroe County is not allowed to utilize the Amendment to the LDRs in question and similar regulations it will be inhibited in its ability to increase the supply of affordable housing within the county and as such both the County and its citizens will be “adversely affected”.
12. Monroe County is a “substantially affected person” entitled to initiate this proceeding in accordance with the Florida Administrative Procedure Act.

### **When and How Notice Was Received**

13. Notice of the Final Order was received via publication in the Florida Administrative Weekly, Volume 32, No. 28, July 14, 2006.
14. This Petition is filed within 21 days of the publication of the Notice of Final Order.

### **Statement of Material Facts Disputed and Alleged**

15. Final Order No. DCA06-OR-157 (attached as “Exhibit A”) rejects Monroe County Ordinance No. 015-2006. (Attached as “Exhibit B”), which Ordinance amends Section 9.5-4 (Definitions), Section 9.5-262 (Maximum Residential Density and District Open Space), and Monroe County Section 9.5-352 (Required Parking).
  - a. Section 9.5-4 (D-31(a)) adds a new definition to the Monroe County Land Development Regulations of a “dwelling, density bonus unit” and defines same to mean “the additional number of dwelling half units that can be added to a site pursuant to means as defined in Section 9.5-262 and shall be (one (1) or more rooms physically arranged to create housekeeping establishment for occupancy by one (1) family with separate toilet facilities. The abbreviation ‘DDBU’ shall mean ‘dwelling density bonus unit.’).”
  - b. Section 9.5-4 (D-31(b)) creates a new definition of “dwelling half unit” to mean a “deed restricted affordable housing unit(s) as defined in MCC Section 9.5-4 (A-4-5) that range in size from 400 to 750 square feet which shall be considered one half (.5) of a

dwelling unit for the purposes of calculating density as laid out in Section 9.5-262.”

- c. Section 9.5-262 adds the following parenthetical allowance for density calculations for deed restricted affordable or employee housing units providing that units which range in size from 400 to 750 square feet shall be considered a dwelling half-unit as defined above.
- d. Section 9.5-352 creates a new category for required number of off street parking spaces requiring that dwelling half-units are only required to have 1.0 space per dwelling half unit as a minimal number off street parking.

16. The Final Order of the DCA found the Ordinance in question to be “inconsistent with the 2010 Monroe County Comprehensive Plan” in that “The Plan does not address half allocations or density bonuses for half allocations.” Petitioner contends that the Ordinance in question is consistent with the 2010 Monroe County Comprehensive Plan, specifically;

- (a) Goal 601 which states “Monroe County shall adopt programs and policies to facilitate access by all current and future residents to adequate affordable housing that is safe, decent and structurally sound and that meets the needs of the population based on type, tenure characteristics, unit size and individual preferences.”

(b) Policy 601.1.12 which states the County “shall adopt land development regulations which may include density bonuses, impact fee waiver program, and other possible regulations to encourage affordable housing.” [Emphasis added]

(c) Section 7.2.2 of the Monroe County 2010 Comprehensive Plan Technical Document provides for “special housing needs.” The Department of Community Affairs established an affordable housing task force for the Florida Keys in conjunction with the provision of technical assistance to Monroe County and made specific recommendations to the County to include regulatory reform to “explore and support the concept of establishing a new zoning designation for affordable housing. This could be handled as an overlay zone combined with other zoning tools or by site specific designations and/or special exceptions for specific sites.” Other recommendations of the DCA’s Task Force were as follows:

- (1) “Local ordinances should be adopted which ease land development requirements and construction regulations to reduce the cost of affordable housing development.”
- (2) “The following incentives should be provided for affordable housing projects and programs:

...



- Relaxation of traffic study requirements
- Density relaxation”

(d) Section 7.3.2 of the Monroe County 2010 Comprehensive Plan Technical Document further provides for strategies to meet the diverse housing needs of Monroe County’s projected population to include:

- (1) “A range of residential land use categories shall be utilized;
- (2) “A variety of residential density shall be provided to encourage the private sector to construct a variety of housing unit types.”

(e) The Department of Community Affairs has failed to follow the legislative intent of Florida Statute, Section 380.0552, which designates the Florida Keys Area as an Area of Critical State Concern and which granted the DCA the authority to reject the Ordinance in question, specifically:

“(2) LEGISLATIVE INTENT – it is hereby declared that it is the intent of the legislature is: . . .

(d) to provide for affordable housing in close proximity to places of employment in the Florida Keys.”

17. (a) In rejection of the Ordinance on the grounds that it was inconsistent with the principles for guiding development as set forth in Florida Statutes, Section 380.0552(7) the Department of Community Affairs has violated the specific intent of the legislature which states: “the

principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions”.

(b) Furthermore, one of the principles [F.S. §380.055(7)(j)] provides for Monroe County: “(j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.”

(c) The Department of Community Affairs has selectively utilized individual principles for guiding development without consideration of the affordable housing crisis in Monroe County and the necessity for implementation of ordinances adopted for the purpose of increasing the supply of affordable housing.

18. The Department of Community Affairs has ignored Florida Statute 125.01055 which states:

Affordable housing – Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

**Concise Statement of Ultimate Facts Alleged**

19. The Ordinance which adopted the Land Development Regulations which were rejected by the Final Order of the Department are consistent with Monroe County’s approved and adopted 2010 Comprehensive Plan and is specifically authorized by Florida Statute Section 125.01055 in order to increase the supply of affordable housing within Monroe County.

**Rules or Statutes Petitioner Contends Require Reversal or Modification of the Agency’s Proposed Action**

20. The Final Order violates the legislative intent as stated in Section 380.0552 and the principles for guiding development, Section 380.0552(7).
21. Florida Statutes Section 125.01055 specifically authorizes the County to enact the Ordinance which has been rejected by the Department of Community Affairs.

**Relief Sought by Petitioner**

WHEREFORE, it is respectfully requested that the Division of Administrative Hearings conduct a formal administrative hearing on the issues raised in this Petition and enter a Final Order determine the Final Order of the Department of Community Affairs to be invalid for the reasons stated above.

Respectfully submitted this 21<sup>st</sup> day of July, 2006.

Monroe County Attorney's Office  
P.O. Box 1026  
Key West, FL 33041-1026  
(305) 292-3470  
(305) 292-3516 (fax)

Suzanne A. Hutton, County Attorney  
FBN: 336122

Robert B. Shillinger  
Chief Assistant County Attorney  
FBN: 058262  
[Shillinger-bob@monroecounty-fl.gov](mailto:Shillinger-bob@monroecounty-fl.gov)

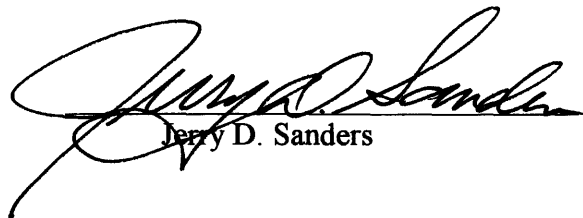
Jerry D. Sanders  
Assistant County Attorney  
FBN: 112798  
[Sanders-Jerry@monroecounty-fl.gov](mailto:Sanders-Jerry@monroecounty-fl.gov)

By: 

Jerry D. Sanders  
Assistant County Attorney

**CERTIFICATE OF SERVICE**

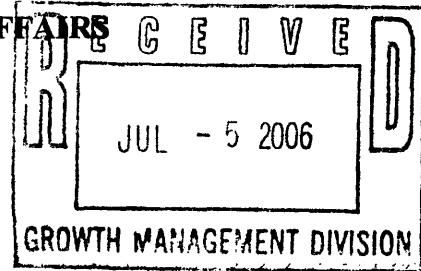
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to the Secretary of the Department of Community and its General Counsel at 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100.



Jerry D. Sanders

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: MONROE COUNTY LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY MONROE COUNTY  
ORDINANCE NO. 015-2006

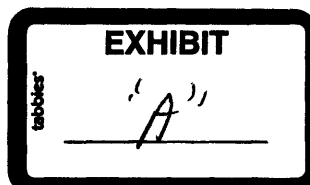


**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to § 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2005), rejecting a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

**FINDINGS OF FACT**

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Monroe County is a local government within the Florida Keys Area.
2. On May 22, 2006, the Department received for review Monroe County Ordinance No. 015-2006 ("Ord. 015-2006").
3. The final order for this Ordinance must be signed by July 20, 2006.
4. The purpose of the Ordinance is to amend the definitions section of the Monroe County Land Development Regulations to add "dwelling, density bonus unit" and "dwelling, half unit," to the definitions, thereby allowing an award to a site if the units are 750 square feet in size.
5. Ordinance 015-2006 is inconsistent with the 2010 Monroe County Comprehensive Plan. Sections 9.5-4(D-31)(a) ("dwelling, density bonus unit"), 9.5-4(D-31)(b) ("dwelling, half unit"), and 9.5-262 are inconsistent with Comprehensive Plan Policy 101.4.21, Future Land Use Densities and Intensities. That policy describes development in terms of dwelling units per acre. The plan does not address half allocations or density bonuses for half



allocations. No basis has been established within the Comprehensive Plan for half of a dwelling unit.

CONCLUSIONS OF LAW

6. The Department is required to approve or reject land development regulations that are enacted, amended, or rescinded by any local government in the Florida Keys Area of Critical State Concern. § 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2005).

7. Monroe County is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2005) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

8. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2005). The regulations adopted by Ord. 015-2006 are land development regulations.

9. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”) as set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

10. Ord. 015-2006 is inconsistent with the following Principles:

- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post disaster reconstruction plan.
- (l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

11. Ord. 015-2006 is inconsistent with the Principles for Guiding Development as a


whole.

12. Ordinance 015-2006 is inconsistent with the 2010 Monroe County Comprehensive Plan.

WHEREFORE, IT IS ORDERED that Ord. 015-2006 is found to be inconsistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby REJECTED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

  
\_\_\_\_\_  
TRACY D. SUBER  
State Planning Administrator  
Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT

WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

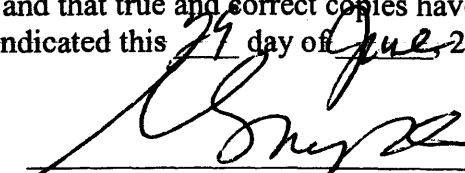
A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.**



CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 29 day of June 2006.

  
\_\_\_\_\_  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Charles McCoy  
Mayor of Monroe County  
500 Whitehead Street, Suite 102  
Key West, Florida 33040

Danny L. Kolhage  
Clerk to the Board of County Commissioners  
500 Whitehead Street  
Key West, Florida 33040

Aref Joulani  
Acting Director  
Planning and Environmental Resources  
2798 Overseas Highway, Suite 400  
Marathon, Florida 33050

By Hand Delivery or Interagency Mail:

Tracy D. Suber, Bureau of State Planning, DCA Tallahassee  
Rebecca Jetton, ACSC Administrator, DCA Tallahassee  
Richard E. Shine, Assistant General Counsel, DCA Tallahassee  
Christine M. Cosby, Assistant General Counsel, DCA Tallahassee

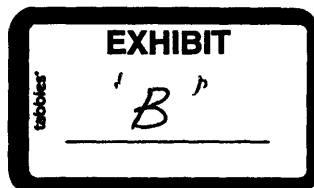
**ORDINANCE NO. 015 - 2006**

**AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADDING TO EXISTING DEFINITIONS (Sec. 9.5-4); AMENDING MAXIMUM RESIDENTIAL DENSITY AND DISTRICT OPEN SPACE (Sec. 9.5-262) TO ALLOW FOR DENSITY BONUSES FOR AFFORDABLE UNITS OF 750 SQ. FT. OR LESS; AMENDING REQUIRED PARKING (Sec. 9.5-352); AMENDING AND/OR ADDING FOR CONSISTENCY PURPOSES RELATED PROVISIONS; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING EFFECTIVE DATE; PROVIDING FOR INCORPORATION IN THE MONROE COUNTY CODE OF ORDINANCES**

**WHEREAS**, the Board of County Commissioners has considered the comments of the public, recommendations of the Planning Commission, recommendations of staff and the Workforce Housing Task Force and its counsel, and other matters, and;

**WHEREAS**, the Board of County Commissioners makes the following Findings of Fact:

1. The lack of sufficient affordable housing opportunities for the local workforce creates serious risks to the local economy.
2. There is limited land area suitable for residential development remaining in the County.
3. There is a current estimated unmet need of about 7,317 affordable units the County.
4. Allowing a density bonus will allow for the creation of more affordable housing under the Code, is a legitimate state interest and is proper to implement Goals 101 and 601 of the plan (e.g., Objective 101.4; Policy 101.4.5; Policy 601.1.12 and Objectives 601.2 and 601.6).
5. These amendments to the land development regulations are appropriate in that they recognize the need for additional detail and comprehensiveness in addressing housing needs in Monroe County, based upon, among other factors, new issues, including accelerated conversion of existing affordable housing stock, increased housing pressures due to housing loss caused by Hurricane Wilma, and the changed projections and assumptions regarding resulting demographic trends.
6. These amendments to the land development regulations specifically further Fla. Stat. § 163.3202(3) by implementing innovative land development regulation provisions such as transfer of development rights, incentive and inclusionary housing.
7. These amendments to the land development regulations are necessary to ensure that, despite the limited availability of developable lands, the County's existing and future housing stock includes adequate affordable housing opportunities.



8. The proposed amendments to the Land Development Regulations are consistent with and further goals, objectives and policies of the Year 2010 Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THE FOLLOWING:** That the preceding findings support its decision to approve the amendments to the Land Development Regulations of the Monroe County Code as provided herein:

**Section 1.**

**Add Sec. 9.5-4(D-31)(a) as follows:**

(D-31)(a) *Dwelling, density bonus unit* means the additional number of dwelling half units that can be added to a site pursuant to the means as defined in Section 9.5-262\*\* and shall be one (1) or more rooms physically arranged to create a housekeeping establishment for occupancy by one (1) family with separate toilet facilities. The abbreviation "DDBU" shall mean "dwelling density bonus unit".

**Section 2.**

**Add Sec. 9.5-4(D-31) (b) as follows:**

(D-31)(b) *Dwelling, half unit* means deed restricted affordable housing units as defined in MCC § 9.5-4 (A-4-5) that range in size from 400 to 750 square feet which shall be considered one-half (.5) of a dwelling unit for the purpose of calculating density as laid out in §9.5-262\*\*.

**Section 3.**

**Amend chart rows of Sec. 9.5-262 and add \*\* row as follows:**

**Maximum residential density and district open space.\*,**

Land use district	Allocated density DU/acre	Maximum net density DU/buildable area	Open space ratio*
Urban Residential	6.0	12.0	0.2
(Affordable and Employee housing)	6.0	25.0**	0.2
Suburban Commercial	3.0	6.0	0.2
(Affordable and Employee housing)	3.0	18.0**	0.2
Mixed Use	1.0	12.0	0.2
(Affordable and Employee housing)	1.0	18.0**	0.2

\*\* For the purposes of these density calculations only, notwithstanding the definition of a dwelling unit as defined in §9.5-4 (D-31), deed restricted affordable or employee housing units (as defined in MCC §§9.5-(A-4-5) and (E-1), respectively), in the SC, MU and UR

land use districts that range in size from 400 to 750 square feet shall be considered a *dwelling half unit*. An equal number of additional *dwelling half unit(s)* shall be available for each dwelling half unit provided. The additional dwelling half units shall be defined as *dwelling density bonus unit(s)*.

#### **Section 4.**

**Amend Section 9.5-352 by adding row as follows:**

(c) *Required Number of Off-Street Parking Spaces:* The following is the number of parking spaces to be provided for each use:

TABLE INSET:

Specific Use Category	Minimum Required Number of Spaces
Dwelling half units	1.0 spaces per dwelling half unit

#### **Section 5. Severability.**

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

#### **Section 6. Conflicting Provisions.**

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

#### **Section 7. Transmittal**

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

#### **Section 8. Filing**

This ordinance shall be filed in the Office of the Secretary of State of Florida but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving the ordinance.

**Section 9. Effective Date.**

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19<sup>th</sup> day of April, 2006.

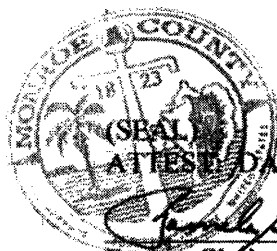
Mayor Charles "Sonny" McCoy  
Mayor Pro Tem Murray Nelson  
Commissioner Dixie Spehar  
Commissioner George Neugent  
Commissioner David Rice

Yes  
Vacant  
Yes  
Yes  
Yes

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

BY: \_\_\_\_\_

Mayor Charles "Sonny" McCoy



(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

Danny L. Kolhage  
Deputy Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney



FILED FOR RECORD  
2006 MAY 10 PM 1:43  
DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.